

ESTTA Tracking number: **ESTTA399371**

Filing date: **03/23/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198448
Party	Plaintiff Salt Life Holdings, LLC
Correspondence Address	ELIZABETH G BORLAND SMITH GAMBRELL & RUSSELL LLP 1230 PEACHTREE STREET NE, SUITE 3100 ATLANTA, GA 30309 UNITED STATES egborland@sgrlaw.com, mbedsole@sgrlaw.com
Submission	Other Motions/Papers
Filer's Name	Elizabeth G. Borland
Filer's e-mail	egborland@sgrlaw.com, mbedsole@sgrlaw.com
Signature	/Elizabeth G. Borland/
Date	03/23/2011
Attachments	Salt Life Opp - Opp M for Judg on Pleadings or to Strike.pdf ( 7 pages )(166301 bytes )

SERVICE MARK

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/105,093  
Published: February 1, 2011

Salt Life Holdings, LLC,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91198448
	)	
Timothy J. Polovina, P.A.,	)	
	)	
Applicant.	)	

Commissioner for Trademarks  
**Box TTAB FEE**  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Madam:

**OPPOSER'S MOTION FOR JUDGMENT ON THE PLEADINGS OR,**  
**IN THE ALTERNATIVE, OPPOSER'S MOTION TO STRIKE**  
**APPLICANT'S RESPONSIVE PLEADING**

On March 14, 2011, Applicant Timothy J. Polovina, P.A. ("Applicant") filed with the Board a Response to Opposer Salt Life Holdings, LLC's ("Opposer") Notice of Opposition. A copy of Applicant's Response is attached as Exhibit A.

The Trademark Rules of Practice require that an answer to a notice of opposition "shall admit or deny the averments upon which the petitioner relies." 37 C.F.R. § 2.114(b). Moreover, Rule 8(b)(6) of the Federal Rules of Civil Procedure provides: "An allegation – other than one

relating to the amount of damages --- is admitted if the responsive pleading is required and the allegation is not denied.”

Here, Applicant’s Response does not contain a single denial or specific response to *any* of the allegations of Opposer’s Notice of Opposition. Consequently, all of the allegations of the Notice of Opposition are deemed admitted.

The admitted allegations of the Notice of Opposition also clearly form a sufficient basis for sustaining Opposer’s opposition to the registration of Applicant’s SALT LIFE REALTY mark. First, Opposer has established that it is the owner of the marks SALT LIFE and SALT LIFE (stylized) (collectively, the “SALT LIFE Marks”) for a wide variety of goods and services, and that it has several valid registrations of its SALT LIFE Marks. Notice of Opposition ¶¶ 1-6. Opposer has also shown that its rights in its SALT LIFE Marks were first established in 2003. Notice of Opposition ¶¶ 7-8. Therefore, Opposer has priority over Applicant’s claimed rights in the SALT LIFE REALTY, which, according to Applicant’s claimed date of first use in its application, only date back to August 2010.

Opposer has also established through Applicant’s admissions that Applicant’s use of SALT LIFE REALTY will create a likelihood of confusion with Opposer’s SALT LIFE Marks in violation of Section 2(d) of the Lanham Act. Notice of Opposition ¶¶ 15-20. Because proof of likelihood of confusion is a statutory ground for opposing registration of a mark, the admitted allegations of Opposer’s Notice of Opposition are sufficient to support Opposer’s opposition. Accordingly, Opposer is entitled to judgment on the pleadings, and its opposition to Applicant’s application to register the SALT LIFE REALTY Mark should be sustained.

In the alternative, because Applicant's Response to the Notice of Opposition is wholly insufficient under the Trademark Rules of Practice, Applicant's Response should be stricken in its entirety. The Rules provide that "An answer to a notice of opposition or petition to cancel corresponds to an answer to a complaint in a court proceeding." 37 C.F.R. § 2.116(c). Moreover, "[a]n answer shall state in short and plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which the opposer relies." Applicant's Response fails to meet any of these requirements. Therefore, the Response should be stricken in its entirety, and Applicant should be required to show cause as to why default judgment should not be entered against it.

This 23rd day of March, 2011.

Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP



Elizabeth G. Borland  
Promenade II, Suite 3100  
1230 Peachtree St., N.E.  
Atlanta, GA 30309  
Phone: (404) 815-3645  
Fax: (404) 685-6945  
Email: [egborland@sgrlaw.com](mailto:egborland@sgrlaw.com)

Attorney for Opposer Salt Life Holdings,  
LLC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 85/105,093  
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	)	
Opposer,	)	
	)	
v.	)	Opposition No. 9198448
	)	
Timothy J. Polovina, P.A.,	)	
	)	
Applicant.	)	

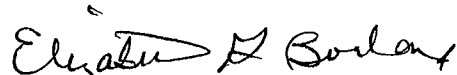
Commissioner for Trademarks  
**Box TTAB FEE**  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**CERTIFICATE OF SERVICE**

I, Elizabeth G. Borland, counsel for Opposer Salt Life Holdings, LLC, do hereby certify that **OPPOSER'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, OPPOSER'S MOTION TO STRIKE RESPONSIVE PLEADING** was served upon applicant by placing a copy of same in the U.S. mail, postage prepaid, addressed as follows:

Timothy J. Polovina, P.A.  
6671 W. Indiantown Rd., Bldg 50-405  
Jupiter, Florida 33458

This 23rd day of March, 2011.

  
\_\_\_\_\_  
Elizabeth G. Borland

# EXHIBIT A

ESTTA Tracking number: **ESTTA397764**

Filing date: **03/14/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198448
Party	Defendant Timothy J. Polovina, P.A.
Correspondence Address	TIMOTHY J. POLOVINA, P.A. TIMOTHY J. POLOVINA, P.A. 6671 W INDIANTOWN RD BLDG 50-405 JUPITER, FL 33458-3991  tpolovina@yahoo.com
Submission	Answer
Filer's Name	Timothy J. Polovina, P.A
Filer's e-mail	tpolovina@yahoo.com, timreo@gmail.com
Signature	/Timothy J. Polovina, P.A./
Date	03/14/2011
Attachments	salt life.pdf ( 1 page )(22516 bytes )

Plaintiff uses this name on stickers and clothes. That has nothing to do with real estate. Nor do they have the name registered in anything to do with real estate.

Sincerely,

/Timothy J. Polovina, P.A./

I have ordered this response to be delivered to the plaintiff below on 3/14/11 via registered mail.

/Timothy J. Polovina, P.A./

Salt Life Holdings, LLC

Elizabeth G. Borland

Smith, Gambrell & Russell, LLP

1230 Peachtree Street, N.E.Suite 3100, Promeande II

Atlanta, GA 30309